## IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

WILLIE JAMES BANKS, : CIVIL NO. 1:CV-08-0568

Plaintiff :

: Judge Rambo

v. : : Magistrate Judge Smyser

UNITED STATES OF AMERICA,

Defendant

## MEMORANDUM

Before the court is a report of the magistrate judge to whom this matter was referred which recommends that the captioned action be dismissed for Plaintiff's failure to comply with Local Rule 7.6 and an order of court dated February 26, 2009. Plaintiff has filed objections to the report and recommendation to which the Defendant has responded. The matter is ripe for disposition.

On October 24, 2008, leave was granted to Defendant to file a dispositive motion to dismiss and for summary judgment and a supporting brief. Plaintiff failed to file a brief in opposition to Defendant's motion to dismiss and for summary judgment by November 12, 2008 and did not seek an extension of time to do so. By order of February26, 2009, Plaintiff was directed to file a brief in opposition and a response to Defendant's statement of material facts by March 20, 2009. Plaintiff failed to comply; thus, the magistrate judge recommended the action be dismissed after an analysis set forth in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 868 (3d Cir. 1984).

In Plaintiff's objections to the report and recommendation, he claims that he "did not have the resources to get into a legal vocabulary battle with trained professionals . . . and did not have access as to all the local rules. . . ." It is noted

that a standing practice order with pertinent local rules on briefing responsibilities was sent to Plaintiff on March 28, 2008.

The orders directing Plaintiff to respond to Defendant's motion are in plain English. He made no attempt to seek an extension of time to file a brief. He did not advise the court that he did not understand what he was procedurally required to do. He waited five months, and only after the report and recommendation was filed, to attempt to explain his failure to abide by court orders. His actions in this situation were clearly dilatory and amounts to failure to prosecute.

An appropriate order will be issued.

s/Sylvia H. Rambo United States District Judge

Dated: June 18, 2009.

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## ORDER

In accordance with the accompanying memorandum, IT IS HEREBY ORDERED THAT:

- 1) The court adopts the report and recommendation of Magistrate Judge Smyser.
- 2) The captioned action is dismissed pursuant to Federal Rule of Civil Procedure 41(b) for Plaintiff's failure to obey Middle District Local Rule 7.6 and the order of February 26, 2009.
- 3) It is certified that any appeal from this order will be deemed frivolous and not taken in good faith.
  - 4) The Clerk of Court shall close the file.

s/Sylvia H. Rambo United States District Judge

Dated: June 18, 2009.